

By: Burnam

H.B. No. 3736

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the sale of newly constructed homes and requiring the  
3 Texas Real Estate Commission to adopt contract forms to be used in  
4 the sale of a newly constructed home.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 1101.005, Occupations Code, is amended  
7 to read as follows:

8 Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter  
9 does not apply to:

10 (1) an attorney licensed in this state;

11 (2) an attorney-in-fact authorized under a power of  
12 attorney to conduct a real estate transaction;

13 (3) a public official while engaged in official  
14 duties;

15 (4) an auctioneer licensed under Chapter 1802 while  
16 conducting the sale of real estate by auction if the auctioneer does  
17 not perform another act of a broker or salesperson;

18 (5) a person conducting a real estate transaction  
19 under a court order or the authority of a will or written trust  
20 instrument;

21 (6) ~~[a person employed by an owner in the sale of~~  
22 ~~structures and land on which structures are located if the~~  
23 ~~structures are erected by the owner in the course of the owner's~~  
24 ~~business;~~

1           ~~(7)~~ an on-site manager of an apartment complex;

2           (7) ~~(8)~~ an owner or the owner's employee who leases  
3 the owner's improved or unimproved real estate; or

4           (8) ~~(9)~~ a transaction involving:

5                   (A) the sale, lease, or transfer of a mineral or  
6 mining interest in real property;

7                   (B) the sale, lease, or transfer of a cemetery  
8 lot;

9                   (C) the lease or management of a hotel or motel;  
10 or

11                   (D) the sale of real property under a power of  
12 sale conferred by a deed of trust or other contract lien.

13           SECTION 2. Section 1101.155(b), Occupations Code, is  
14 amended to read as follows:

15           (b) Except as provided by Section 1101.562, the ~~[The]~~  
16 commission may not prohibit a license holder from using for the  
17 sale, exchange, option, or lease of an interest in real property a  
18 contract form that is:

19                   (1) prepared by the property owner; or

20                   (2) prepared by an attorney and required by the  
21 property owner.

22           SECTION 3. Section 1101.557(c), Occupations Code, is  
23 amended to read as follows:

24           (c) For the purposes of this section:

25                   (1) a license holder who has the authority to bind a  
26 party to a lease or sale under a power of attorney or a property  
27 management agreement is also a party to the lease or sale; and

1           (2) [~~an inquiry to a person described by Section~~  
2 ~~1101.005(6) about contract terms or forms required by the person's~~  
3 ~~employer does not violate Section 1101.652(b)(22) if the person~~  
4 ~~does not have the authority to bind the employer to the contract,~~  
5 ~~and~~

6           [~~(3)~~] the sole delivery of an offer to a party does not  
7 violate Section 1101.652(b)(22) if:

8           (A) the party's broker consents to the delivery;

9           (B) a copy of the offer is sent to the party's  
10 broker, unless a governmental agency using a sealed bid process  
11 does not allow a copy to be sent; and

12           (C) the person delivering the offer does not  
13 engage in another activity that directly or indirectly violates  
14 Section 1101.652(b)(22).

15           SECTION 4. Subchapter L, Chapter 1101, Occupations Code, is  
16 amended by adding Section 1101.562 to read as follows:

17           Sec. 1101.562. USE OF BROKER OR SALESPERSON IN CERTAIN  
18 TRANSACTIONS. (a) Notwithstanding any other law, a person shall  
19 use the services of a broker or salesperson for a transaction that  
20 involves the sale of a new single-family home.

21           (b) The commission by rule shall require a license holder  
22 providing services in a transaction described by Subsection (a) to  
23 use contract forms prepared by the Texas Real Estate Broker-Lawyer  
24 Committee and adopted by the commission for the sale of a new  
25 single-family home. The commission may not prohibit a license  
26 holder from using a contract form for the sale of a new  
27 single-family home if the form is:

1           (1) prepared by the purchaser; or

2           (2) prepared by an attorney and required by the  
3 purchaser.

4           (c) A contract form required by the commission under  
5 Subsection (b) may not include a provision that requires the  
6 parties to submit a dispute arising under the contract to binding  
7 arbitration.

8           SECTION 5. (a) Not later than December 1, 2013, the Texas  
9 Real Estate Commission shall adopt rules and forms required by  
10 Section 1101.562, Occupations Code, as added by this Act.

11           (b) Section 1101.562, Occupations Code, as added by this  
12 Act, applies to a transaction that occurs on or after January 1,  
13 2014. A transaction that occurs before January 1, 2014, is governed  
14 by the law in effect immediately before the effective date of this  
15 Act, and the former law is continued in effect for that purpose.

16           SECTION 6. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2013.